



**DEPARTMENT OF THE NAVY**  
**OFFICE OF THE JUDGE ADVOCATE GENERAL**  
1322 PATTERSON AVENUE SE SUITE 3000  
WASHINGTON NAVY YARD DC 20374-5066

IN REPLY REFER TO:

JAGINST 5040.2  
00CCAO  
**OCT 05 2021**

JUDGE ADVOCATE GENERAL INSTRUCTION 5040.2

From: Judge Advocate General

Subj: ASSESSMENT OF THE NAVY JUDGE ADVOCATE GENERAL'S CORPS' LEGAL PRACTICE

Ref: (a) U.S. Navy Regulations, 1990  
(b) SECNAVINST 5430.27E  
(c) 10 U.S.C.  
(d) JAGINST 1500.4B  
(e) JAG/CNLSCINST 5040.1B  
(f) JAG Notice 5450  
(g) JAGINST 5813.4K  
(h) JAGINST 5803.1E  
(i) American Bar Association Model Code of Judicial Conduct

Encl: (1) Office of the Judge Advocate General Assessment Process  
(2) Non-Naval Legal Service Command Staff Judge Advocate Assessment Process  
(3) Judiciary Assessment Process  
(4) Naval Justice School Assessment Process

1. Purpose. To promulgate policy, assign responsibilities, and establish procedures to assess the effectiveness of offices staffed by Navy Judge Advocate General's Corps ("JAG Corps") legal community personnel.

2. Applicability. This instruction applies to the Office of the Judge Advocate General (OJAG), including the Disability Evaluation System Counsel Program; Naval Legal Service Command (NLSC), including Defense Service Offices, Region Legal Service Offices (RLSO), and the Victims' Legal Counsel Program; the Naval Justice School (NJS); and non-NLSC staff judge advocate (SJA) offices.

3. Background

a. In accordance with Article 0331 of reference (a), the Judge Advocate General (JAG) "provides or supervises the provision of all legal advice and related services throughout the Department of the Navy (DON), except for the advice and services provided by the General Counsel." Reference (b) assigns the JAG overall responsibility for providing and supervising the provision of legal advice and related services throughout the DON in areas including military

OCT 05 2021

justice, legal assistance, national security law, and the ethical and professional practice of the law. Section 806 of reference (c) requires the JAG or senior members of the JAG's staff to "make frequent inspections in the field in supervision of the administration of military justice." Reference (d) assigns the Chief Counsel to the JAG for Assessments and Organizational Performance (CCAO) the responsibility to periodically assess the performance of the JAG community training program in accordance with established metrics. Reference (e) provides that the NLSC Inspector General (NLSC IG) will perform assessments of NLSC activities. Reference (f) indicates the Assistant JAG, Chief Judge, Department of the Navy (CJDON) is responsible for the continuous monitoring and assessment of judicial quality and efficiency within the DON.

b. The Navy JAG Corps provides legal support to organizational clients within the DON, the Department of Defense (DoD), and other governmental agencies. This instruction establishes a formal, repeatable, and continuous process to assess the effectiveness of all aspects of the Navy JAG Corps legal practice. The CCAO will have overall responsibility for assessments conducted pursuant to this instruction, except as noted below concerning assessments of the trial judiciary. The CCAO will also exercise oversight of assessments of NLSC legal practice performed by the NLSC IG, pursuant to reference (e). Enclosures (1) through (4) detail specific guidance regarding assessments of OJAG, non-NLSC SJA offices, the trial judiciary, and NJS.

#### 4. Policy

a. This instruction outlines the procedures by which the JAG will ensure effective oversight and assessment of activities operating under the responsibility of the JAG.

b. Assessments conducted pursuant to this instruction are not substitutes for assessments or evaluations that may be required by other DoD or DON directives. However, to the extent practicable and advisable, assessments conducted pursuant to this instruction will be aligned to complement or reinforce other evaluations conducted by other organizations such as the Office of the Naval Inspector General (IG), the Legal Counsel to the Vice Chief of Naval Operations, and Echelon II assessment teams.

c. The CCAO is the designated senior member of the JAG's staff to oversee and implement the JAG Corps Comprehensive Assessment Program. In this role, the CCAO will coordinate with CNLSC and the NLSC IG to ensure the effective implementation of the Article 6 Program for NLSC. As required, the CCAO will provide guidance to the NLSC IG on the Article 6 inspection process. However, the CCAO does not have any influence over the NLSC IG's non-Article 6 duties, to include Hotline complaints and investigations.

d. The CJDON is responsible for executing assessments of trial judges. In order to preserve the independence of the trial judiciary, the CCAO will not conduct assessments of military judges. However, the CCAO will coordinate with the CJDON to ensure the assessments of judges are conducted and relevant results are shared with appropriate stakeholders.

OCT 05 2021

## 5. Responsibilities

### a. The JAG will:

(1) Approve an annual JAG Corps Legal Community Comprehensive Assessment Plan and designate any organizations or items of interest for particular focus by the CCAO. Once approved, this plan will be published to the JAG Community on the CCAO page of the JAG Corps SharePoint portal.

(2) Review assessments conducted under the authority of this instruction and direct any appropriate actions as warranted, including, but not limited to: resource allocation; sharing of lessons learned and best practices; and/or remedial actions to address concerns identified through the assessment process.

### b. The CCAO will:

#### (1) On an annual basis:

(a) Conduct a review of the JAG Corps Legal Community Comprehensive Assessment Program;

(b) Provide a brief to the JAG and the Deputy JAG (DJAG) by 1 August, recommending any warranted changes to this instruction; and

(c) Submit a proposed assessment plan for the following fiscal year, no later than 1 September.

(2) Following each assessment conducted pursuant to this instruction, ensure a report is provided to the JAG, via the DJAG. Reports prepared following assessments of NLSC activities will be routed via Commander, NLSC (CNLSC).

(3) Ensure best practices, lessons learned, and any items requiring corrective actions are identified within each assessment report.

(4) Following JAG approval of each assessment report, ensure that best practices, lessons learned, and any items requiring corrective action are provided to relevant stakeholders, including: Assistant Judge Advocates General; CNLSC; Commanding Officer (CO), NJS / Special Assistant for Training; and others.

(5) Ensure the status of required corrective actions are monitored and reported to the JAG when complete.

(6) Update JAG Corps Legal Community assessment checklists as necessary, taking into account feedback received from offices inspected and other relevant stakeholders.

(7) Ensure assessment schedules for commands and offices subject to assessment under

OCT 05 2021

this instruction are coordinated with the appropriate principal(s) and provide checklists 30 days in advance of assessment visits.

(8) Coordinate with Navy IG staff, the Legal Counsel for the Vice Chief of Naval Operations, and other offices that conduct assessments of offices staffed by Navy JAG Corps Community personnel to ensure alignment of effort and de-confliction of schedules.

(9) Maintain an archive of Assessment Reports in accordance with the DON Records Management Manual, SECNAV M-5210.1.

c. All Assistant Judge Advocates General (AJAGs) shall:

(1) Nominate and provide subject matter experts, when appropriate, to assist the CCAO in preparing for, conducting, and reporting the results of the assessments outlined in this instruction. If selected by the CCAO as an assessment team member, the appropriate AJAG will detail that member to the CCAO for the duration of an assessment. Assessment duties shall be the individual's primary duty until completion of the assessment and submission of the report by the CCAO, unless earlier relieved of those duties by the CCAO.

(2) Provide policy guidance and support to the CCAO office in reviewing and updating assessment guides.

(3) Coordinate with the CCAO to identify areas that should be assessed as part of the CCAO assessment process.

(4) Ensure that offices under their supervision coordinate with the CCAO during the preparation and conduct of assessments.

(5) Ensure the CCAO has access to any required files, data, or other information in order to prepare for and conduct assessments pursuant to this instruction.

d. The AJAG (Operations and Management) (AJAG 06) shall provide all necessary support to the CCAO for execution of the assessment program.

e. All SJA offices shall provide any required support to the CCAO for the preparation and conduct of assessments conducted pursuant to this instruction, to include access to any necessary records, except those protected by appropriate privilege or classification level.

  
D. E. CRANDALL

Releasability and distribution:

This instruction is cleared for public release and is available electronically only via the Office of the Judge Advocate General Web site: [www.jag.navy.mil](http://www.jag.navy.mil)

OCT 05 2021

### **OJAG DIVISION ASSESSMENTS**

1. **Policy.** OJAG Divisions provide support to organizational clients within the DON, DoD, and other U.S. government departments and agencies. CCAO will consult organizational recipients of OJAG legal support to facilitate continual evaluation of OJAG Division performance. Assessments of OJAG Divisions within the AJAG (Civil Law) (AJAG 01), AJAG (Military Justice) (AJAG 02), and AJAG 06 organizations will occur at least biennially.
2. **Objectives.** The objectives of OJAG Division Assessments are to:
  - a. Exercise the JAG's required oversight of the practice of law by legal practitioners within OJAG;
  - b. Evaluate the degree of client satisfaction with OJAG support;
  - c. Identify and address any concerns regarding such support, to include deficiencies and areas for improvement;
  - d. Identify best practices and lessons learned;
  - e. Facilitate corrective actions to improve the quality of OJAG support; and,
  - f. Forecast the demand for, and nature of, future support requirements.
3. The CCAO will coordinate with the relevant AJAG and Division Directors to identify which recipients of OJAG support will be consulted and the scheduling of such meetings.
4. Within 10 working days of conducting the assessment with recipients of OJAG support, the CCAO will share a draft assessment report, to include any recommended remedial actions, as well as identification of lessons learned and best practices, with the relevant AJAG and Division Director. The AJAG and Division Director will have 10 working days to provide any feedback to the CCAO on the contents of the report. Within 10 working days of receiving feedback from the AJAG or Division Director, the CCAO will forward the final assessment report to the JAG via the DJAG.
5. Following JAG approval of each assessment report, the relevant AJAG will be responsible for tracking any remedial actions until complete, disseminating lessons learned and best practices to appropriate stakeholders, and submitting a final close-out report to the JAG once all corrective actions are completed.

Enclosure (1)

OCT 05 2021

### **NON-NLSC SJA ASSESSMENTS**

1. **Policy.** As members of Fleet and shore staffs, non-NLSC SJAs provide advice to Navy leaders on a variety of legal issues, including military justice, national security law, and government ethics. In order to exercise the supervision and oversight required by references (a) and (b) of these practice areas, and to ensure the ethical and professional practice of law by SJAs, the CCAO will review non-NLSC SJA offices on a triennial basis. The CCAO assessment will be de-conflicted with IG assessments to ensure a non-NLSC SJA office is not inspected twice in the same year. The CCAO will not review Marine Corps or Joint SJA offices.
2. **Objectives.** The objectives of the non-NLSC SJA assessments are to:
  - a. Exercise the JAG's required oversight of the practice of law by non-NLSC SJA offices;
  - b. Identify and address any concerns expressed by non-NLSC SJA offices, to include deficiencies and areas for improvement, when appropriate;
  - c. Identify and disseminate best practices and lessons learned;
  - d. Obtain feedback on the performance of non-NLSC SJA offices;
  - e. Obtain feedback on the support OJAG and NLSC provide to non-NLSC SJA offices and the Fleet; and
  - f. Forecast the demand for, and nature of, future support requirements.
3. The CCAO will coordinate with relevant Echelon II and other appropriate Fleet and SJAs to identify which non-NLSC SJA offices will be assessed, the dates of the assessments, and the specific practice areas to be assessed. As appropriate, and subject to availability, staff from Echelon II SJA offices may be invited to join the CCAO assessments of other Echelon II SJA offices as well as lower Echelon SJA offices within their claimancy.
4. Assessment guides will be provided to relevant offices in advance of all assessments to facilitate an efficient and productive assessment process with minimal impact on non-NLSC SJA office operations. Assessment guides will be posted on the CCAO JAG Corps SharePoint portal and will be updated based on feedback from the JAG community and other stakeholders as circumstances warrant.
5. Within 15 working days of conducting the assessment, the CCAO will share a draft assessment report, to include any recommended remedial actions, as well as identification of lessons learned and best practices, with the assessed non-NLSC SJA office. CCAO will request the non-NLSC SJA office provide, within 15 working days, any feedback to the CCAO on the

Enclosure (2)

**OCT 25 2021**

contents of the report. Within 10 working days of receiving feedback from the non-NLSC SJA office, the CCAO will forward the final assessment report to the JAG via the DJAG.

6. Following JAG approval of each non-NLSC SJA office assessment report, the CCAO will provide lessons learned, best practices, any items requiring corrective action, and other relevant feedback to appropriate stakeholders (e.g., higher echelon SJA offices, OJAG Division Directors, etc.). The CCAO will ensure feedback and corrective actions are tracked and will submit a final close-out report to the JAG once all corrective actions are completed.

OCT 05 2021

## ASSESSMENTS OF THE TRIAL JUDICIARY

### 1. Policy

a. Per reference (f), the CJDON is responsible for the continuous monitoring and assessment of judicial quality and efficiency. In accordance with references (f) through (i), judicial effectiveness shall be measured, in part, by regular observations by the CJDON, the Chief Trial Judge of the Navy and Marine Corps Trial Judiciary (CTJ), or a designated senior jurist from outside the Circuit or judicial office to be assessed.

b. For Navy judicial offices, regular assessments of the trial judiciary will be conducted by the CTJ or other senior jurist designated by the CJDON, at a minimum, within twelve months of the most recent JAG IG Article 6 inspection of the local RLSO in a judicial office's area of responsibility. For USMC judicial offices, regular assessment of the trial judiciary will occur on a biennial basis.

c. The CCAO will not have a role in the assessment of the trial judiciary. The CCAO will only monitor such assessments to ensure they are completed in support of the JAG's responsibility to exercise supervision and oversight of military justice within the DON. In the event that an assessment of the trial judiciary identifies concerns with the practice of law in other areas of the JAG's responsibility, the CCAO will ensure coordination of corrective action with CNLSC, the relevant AJAG, and/or the appropriate non-NLSC SJA office, as necessary.

### 2. Process of assessment. The officer conducting the assessment of the trial judiciary will:

a. Interview all available trial and defense litigation supervisors assigned to the assessed judicial office's area of responsibility;

b. Review at least one written ruling and one set of findings instructions issued within six months of the assessment for each active military judge in the judicial office;

c. Review a verified record of trial that includes a providence inquiry completed within six months of the assessment for each active military judge in the judicial office;

d. Interview the circuit military judge assigned to the judicial office;

e. Observe at least one proceeding for each active military judge assigned to the judicial office. In the event that scheduling does not permit in-person observation of an active case, review of the verified record of trial in one guilty plea satisfies this requirement; and

f. Review case management system entries for all cases pending Article 66 review in

Enclosure (3)



**OCT 05 2021**

the assessed judicial office's area of responsibility.

3. Within 30 working days of completion of the assessment, the individual conducting the assessment will route a report of the assessment through the CJDON to the JAG via the DJAG. A copy of the report will also be provided to the CCAO. CJDON will be responsible for tracking and reporting any remedial actions to the JAG when complete.

OCT 25 2021

**NJS AND SPECIAL ASSISTANT FOR TRAINING ASSESSMENTS**

1. **Background.** NJS provides accession-level and career legal training for all active and reserve Navy, Marine Corps, and Coast Guard judge advocates and Navy and Marine Corps legal professionals. NJS also provides training for Sea Service commanders, legal officers, senior enlisted advisors, and all Navy officers along their career continuum to ensure they execute their duties in accordance with the Uniform Code of Military Justice and other laws and regulations. Commanding Officer (CO), NJS serves the dual-hat role as the JAG Corps Special Assistant for Training (SAT) and is responsible for the oversight and management of all Navy JAGC training.
2. **Policy.** The unique training mission of NJS and the CO's SAT responsibility for all JAG Corps training requires an assessment of functions and missions not applicable to other commands, directorates, and offices led by judge advocates. The CCAO will assess NJS's unique functions and missions in accordance with this instruction in conjunction with information collected about NJS/SAT's performance during other assessments. In addition, NJS will continue to be assessed by the NLSC IG in areas such as command programs and other requirements pursuant to enclosure (e).
3. The CCAO will coordinate with the NLSC IG in scheduling assessments of NJS to minimize the impact on the command and to leverage assessment team members among the NLSC IG team and the CCAO team.
4. Within 15 business days of completing the assessment of NJS, the CCAO will provide a draft report to the CO of NJS for review. The CO of NJS/SAT will have 10 working days to submit any comments or recommended edits to the CCAO. Within 10 working days of following receipt of any comments or recommended edits from CO of NJS/SAT, the CCAO will forward the report to the JAG via the DJAG.
5. Following JAG approval of the NJS/SAT assessment report, the CCAO will provide lessons learned, best practices, any items requiring corrective action, and other relevant feedback to appropriate stakeholders. The CCAO will ensure corrective actions are tracked and will submit a final close-out report to the JAG once all corrective actions are completed.

Enclosure (4)